

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLEE**

74-1154

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 74-1154

NORMAN M. CAMPBELL, A citizen of the United States,
Plaintiff-Appellant,
-against-

PEOPLE OF THE STATE OF NEW YORK; LOUIS J. LEFKOWITZ,
Attorney General,
Defendants-Appellees,

NORMAN M. CAMPBELL, A citizen of the United States,
Plaintiff-Appellant,
-against-

PEOPLE OF THE STATE OF NEW YORK; LOUIS J. LEFKOWITZ,
Attorney General,
NIAGARA MOHAWK POWER CORPORATION, JOHN G. HAEHL, JR.,
President,
Defendants-Appellees.

BRIEF FOR APPELLEES STATE OF
NEW YORK AND LOUIS J. LEFKOWITZ

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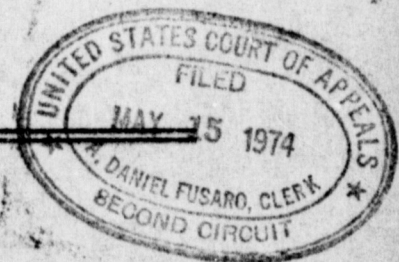


TABLE OF CONTENTS

	<u>PAGE</u>
Statement.....	1
Question Presented.....	2
Facts and Prior Proceedings.....	2
POINT I	
THE COURT BELOW CORRECTLY DISMISSED THE ACTION AS AGAINST THE STATE OF NEW YORK, WHICH IS IMMUNE FROM SUIT UNDER THE ELEVENTH AMENDMENT, AND ATTORNEY GENERAL LEFKOWITZ, WHO IS IMMUNE UNDER THE DOCTRINE OR PROSECUTORIAL IMMUNITY.....	6
POINT II	
THE COURT BELOW CORRECTLY HELD APPELLANT'S CLAIMS BARRED BY THE STATUTE OF LIMITATIONS.....	8
Conclusion.....	10

TABLE OF CASES

	<u>PAGE</u>
<u>Corcoran v. Yorty</u> , 347 F. 2d 222 (9th Cir. 1965), cert. den. 382 U.S. 966, reh. den. 382 U.S. 1002, mot. den. 384 U.S. 923, 388 U.S. 925.....	8
<u>Edelman v. Jordon</u> , 42 L.W. 4419 (1974).....	7
<u>Fanale v. Sheehy</u> , 385 F. 2d 866 (2d Cir. 1967).....	8
<u>Ford Co. v. Dept. of the Treasury</u> , 323 U.S. 459 (1945).....	7
<u>Gregoire v. Biddle</u> , 177 F. 2d 579 (2d Cir. 1949), cert. den. 339 U.S. 949.....	8
<u>Hans v. Louisiana</u> , 134 U.S. 1 (1889).....	7
<u>Matthews v. Kilroe, et al.</u> , 170 F. Supp. 416 (S.D.N.Y., 1959).....	7
<u>Monroe v. Pape</u> , 365 U.S. 167 (1961).....	7
<u>Ortiz v. La Vallee</u> , 442 F. 2d 912 (2d Cir. 1971)...	9
<u>Parden v. Terminal Railway Co.</u> , 377 U.S. 184 (1964).....	7
<u>Pierson v. Ray</u> , 386 U.S. 547 (1966).....	8
<u>Rhodes v. Houston</u> , 202 F. Supp. 624 (D.C. Neb. 1962), affd. 309 F. 2d 959 (8th Cir. 1962), cert. den. 372 U.S. 909 (1963).....	8
<u>Romer v. Leary</u> , 425 F. 2d 186 (2d Cir. 1970).....	9
<u>Swan v. Board of Higher Education</u> , 319 F. 2d 56 (2d Cir., 1963).....	9
<u>Zuckerman v. Appellate Division</u> , 421 F. 2d 625 (2d Cir., 1970).....	7

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Attorney General,

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Plaintiff-Appellant,

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Attorney General,

NIAGARA MOHAWK POWER CORPORATION, JOHN G. HAEHL, JR.,
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Defendants-Appellees.

BRIEF FOR APPELLEES
STATE OF NEW YORK AND
LOUIS J. LEFKOWITZ

Statement

This is an appeal from an order of the United States
District Court for the Northern District of New York (Foley, C.J.),
dated November 29, 1973, granting the motion by defendants

People of the State of New York and LOUIS J. LEFKOWITZ, Attorney General, to dismiss two complaints as to the said defendants.

Question Presented

Did the District Court properly grant the motion to dismiss?

Facts and Prior Proceedings

Asserting no jurisdictional grounds, appellant brought two actions in the United States District Court for the Northern District of New York. The complaint in civil action No. 73-CV-434 states that on or about October 25, 1964, the plaintiff Norman M. Campbell appeared before a "Police Court Judge Landry", who advised the plaintiff that he was "accused of Malicious Mischief" and set bail at "One Thousand Dollars." The complaint further states that plaintiff "was driven to the isolated Albany County Jail" and that "after some weeks of imprisonment in the jail plaintiff was removed to Hudson River State Hospital."

Plaintiff then alleges that Louis J. Lefkowitz "as Attorney General of the People of the State of New York being the Executive officer of the Supreme Court and Attorney for the Hospital ... became ... legally liable for his effects and possessions." The complaint goes on to state that plaintiff

escaped from Hudson River State Hospital and "made his home and earned his living in State of California and after almost ten years has returned to find his property in almost ruin." He claims the "County of Albany has been allowed to confiscate three acres of valuable land" and that "a false report filed by the conservator appointed by the Court, and his attorney under the auspices of Attorney General Lefkowitz."

In his prayer for relief he asks the Court to "direct the Attorney General of the State of New York to restore plaintiff his property; that the People of the State of New York shall pay the costs of this action; and that the People of the State of New York shall pay into the United States Treasury, the equivalent of the costs of a year's operation of the Office of Attorney General of the State of New York as Damage."

In civil action No. 73-CV-435, plaintiff alleges that "On or about July 1, 1958, two Town of Colonie Policemen" entered on his property and "with no warrant, provocation, or reasonable cause, knocked him down and beat him and handcuffed and threw into their car (sic) and ran him to Albany County Jail, where he was confined."

That "the Justice of the Peace on whose order the policeman had acted ... submitted a request to court of jurisdiction at Albany for commitment to State Mental Hospital

at Poughkeepsie, N.Y. under the New York State Laws of Mental Hygiene, where he was confined on the observation ward for six months."

The remainder of the complaint in Civil Action No. 73-CV-435 relates to the alleged illegal taking of plaintiff's real property by Niagara Mohawk Power Corporation, named along with a "John G. Haehl, Jr., President" as additional defendants in said cause of action, such illegal taking having been countenanced by LOUIS J. LEFKOWITZ. Plaintiff asks that this Court "direct restitution of his Columbia Street property" and states that "at the conclusion of this case the Attorney General will feel duty bound to give a year's salary into the United States Treasury as damages."

An affidavit filed with the District Court stated that the files relating to individuals confined to Hudson River State Hospital show that on November 7, 1958, an order was made at a Special Term of Supreme Court in and for the County of Ulster, State of New York (Taylor, J.), appointing George Sherwood Campbell, 98 Columbia Street, Cohoes, New York, committee of the person and estate of Norman M. Campbell, who is described in such order as an incompetent person. On March 17, 1961, at a Special Term of Supreme Court, Rensselaer County (Bruhn, J.), George Sherwood Campbell was discharged as committee of the

person and property of Norman M. Campbell. The order further stated that Norman M. Campbell has become competent to manage himself and his affairs and provided that George Sherwood Campbell, as committee, etc., file in the office of the County Clerk of the County of Albany a duly verified account of his proceedings as committee and cause the same to be judicially settled or in the alternative, file with this order a general release from Norman M. Campbell. Attached to the order is a general release running from Norman M. Campbell to George Sherwood Campbell dated May 11, 1961, sworn to before a notary public. Attached to the copy of the order is a certificate of Donald L. Lynch, Clerk of the County of Albany, certifying that the order and release were filed in his office on June 5, 1961.

At a Special Term of Supreme Court in and for the County of Albany on July 9, 1965, an order was made by the Honorable T. Paul Kane appointing Egbert L. Campbell, 18 Utica Avenue, Latham, New York, as committee of the person and estate of Norman M. Campbell. On July 16, 1971, an order was made in the Supreme Court, Albany County (Kane, J.), declaring Norman M. Campbell competent to manage himself and his affairs and discharging Egbert L. Campbell as committee of the person and property of Norman M. Campbell. On May 31, 1972, an order was made in Supreme

Court, Albany County (Pitt, J.), settling the account of Egbert L. Campbell from all further liability and responsibility as committee.

On or about September 27, 1973, appellant filed the two complaints described supra in the United States District Court for the Northern District of New York. A hearing was held on November 5, 1973, before the Hon. James T. Foley, United States District Judge, and by order dated November 29, 1973, Judge Foley granted the motion of defendants People of the State of New York and Louis J. Lefkowitz to dismiss the complaint. Plaintiff has appealed to this Court from that order.

POINT I

THE COURT BELOW CORRECTLY
DISMISSED THE ACTION AS AGAINST
THE STATE OF NEW YORK, WHICH
IS IMMUNE FROM SUIT UNDER THE
ELEVENTH AMENDMENT, AND ATTORNEY
GENERAL LEFKOWITZ, WHO IS IMMUNE
UNDER THE DOCTRINE OF PROSECUTORIAL
IMMUNITY.

The law is clear that a state may not be sued without its consent by its own citizens or by citizens of another state. The Eleventh Amendment provides:

"the judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens of any foreign state."

This amendment grants immunity to the State of New York against suits by its own citizens, as well as against suits by other states. Hans v. Louisiana, 134 U.S. 1. (1889); Ford Co. v. Dept. of the Treasury, 323 U.S. 459, 464 (1945); Parden v. Terminal Railway, Co., 377 U.S. 184 (1964).

The Supreme Court of the United States has very recently reaffirmed the doctrine of state immunity under the Eleventh Amendment in Edelman v. Jordan, 42 L.W. 4419 (March, 1974).

Insofar as this action was construed by the court below as predicated upon 42 U.S.C. 1983* (Hearing Transcript p. 12), it cannot be brought against the State of New York because the state is not a "person" under the Civil Rights Act. Monroe v. Pape, 365 U.S. 167 (1961); Zuckerman v. Appellate Division, 421 F. 2d 625 (2d Cir., 1970).

II

Attorney General Lefkowitz is not a proper party to this action under any rationale. Appellant cites no specific acts of the Attorney General, but merely sets forth random and conclusory allegations as to his responsibilities to appellant. It is quite evident that the Attorney General had nothing whatever to do with appellant's difficulties, and the basis upon which relief is sought is here so confused as to warrant dismissal in any event. See Matthews v. Kilroe, et al., 170 F. Supp. 416

-7-

* Plaintiff's complaints did not cite any statutory basis for federal court jurisdiction.

(S.D.N.Y. 1959); Rhodes v. Houston, 202 F. Supp. 624, 629 (D.C. Neb. 1962), affd. 309 F. 2d 959 (8th Cir. 1962), cert. den. 372 U.S. 909 (1963).*

Even assuming arguendo that one could imply any acts in relation to appellant, such acts would clearly have been performed in his official capacity as Attorney General of the State of New York and as such are entitled to immunity. Pierson v. Ray, 386 U.S. 547 (1966). See also Fanale v. Sheehy, 385 F. 2d 866, (2d Cir. 1967); Gregoire v. Biddle, 117 F. 2d 579 (2d Cir. 1949), cert. den. 339 U.S. 949.

POINT II

THE COURT BELOW CORRECTLY HELD
APPELLANT'S CLAIMS BARRED BY
THE STATUTE OF LIMITATIONS.

Although the basis for the Court's jurisdiction is difficult to perceive, the Court below, as previously shown, apparently treated the action as one brought under the Civil Rights Act. Even assuming without conceding that the Court could thus assume jurisdiction of this action, the law is clear that

-8-

* It should be noted that appellant's complaints clearly violate Rule 8 of the Federal Rules of Civil Procedure which requires "a short and plain statement of the claim showing that the pleader is entitled to relief. . ." See Corcoran v. Yorty, 347 F. 2d 22 (9th Cir. 1965), cert. den. 382 U.S. 966, reh. den. 382 U.S. 1002, mot. den. 384 U.S. 923, 388 U.S. 925.

"[B]ecause a statute of limitations for actions of the present kind is not contained in either the Civil Rights Act itself or elsewhere in the federal statute the applicable period of limitations is that which New York would enforce had an action seeking similar relief been brought in a court of that state. [citations omitted]". Swan v. Board of Higher Education, 319 F. 2d 56, 59 (2d Cir. 1963).

The governing New York Statute for Civil Rights actions is CPLR § 214(2) (McKinney's 1963), which prescribes a three year limitation period. See Romer v. Leary, 425 F. 2d 186 (2d Cir. 1970); Ortiz v. LaVallee, 442 F. 2d 912 (2d Cir. 1971).

It is quite clear from the complaint that the purported wrongs alleged to have been inflicted upon appellant occurred, if at all, considerably more than three years prior to the bringing of this action. Thus the complaint in 73 Civ. 434 alleges a confinement in the Albany County Jail in October, 1964 and removal to Hudson River State Hospital "after some weeks of imprisonment. . ." (Complaint, p. 2).^{*} He allegedly escaped and "made his home and earned his living in California, and after almost ten years has returned to find his property in almost ruin" (id, p. 2). The complaint in 73 Civ. 425 alleges beatings

-9-

^{*} While CPLR 208 provides for tolling of the statute under certain circumstances, including insanity, the tolling does not apply here, as plaintiff was under no committee supervision for incompetence when the causes of action allegedly arose. See note in Supplementary Practice Commentary for 1973, McKinney's Consolidated Laws, vol. 7B, for § 208, p. 14, c. 208:4.

by policemen in 1958, and an allegedly illegal taking of property by defendant Niagara Mohawk Power Corp., during the period shortly after he "first purchased the land and erected the building more than thirty years ago. . ." (Complaint, 73 Civ. 435, p. 2).

Thus, it is clear that the statute of limitations is a threshold bar to the exercise of federal jurisdiction over appellant's claims.

CONCLUSION

THE ORDER OF THE DISTRICT COURT
SHOULD BE AFFIRMED IN ALL RESPECTS
AND THE COMPLAINT DISMISSED.

Dated: New York, New York
May 15, 1974

Respectfully submitted,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Appellees
State of New York and Pro Se

SAMUEL A. HIRSHOWITZ
First Assistant Attorney General

DAVID H. BERMAN
Assistant Attorney General
of Counsel

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

ROSALIN FANN , being duly sworn, deposes and
says that she is employed in the office of the Attorney
General of the State of New York, attorney for New York and Pro Se
Appellees State of
herein. On the 15th day of May , 1974 , she served
the annexed upon the following named person s :

NORMAN M. CAMPBELL, Pro Se
29 Second Street
Albany, New York

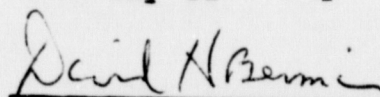
JOSEPH F. CLEARY, ESQ.
126 State Street
Albany, New York 12201

and Pro Se
Attorney/ in the within entitled action by depositing
³ true and correct ^{copies} copy thereof, properly enclosed in a post-
paid wrapper, in a post-office box regularly maintained by the
Government of the United States at Two World Trade Center,
New York, New York 10047, directed to said Attorney/ and Pro Se
addresses within the State designated by them for that
purpose.



ROSALIN FANN

Sworn to before me this
15th day of May , 1974


Assistant Attorney General
of the State of New York